

IN THE MATTER OF

**WOELPER ENTERPRISES,
INC., AND FRIENDLY INN,
LLC**

Petitioners

: BEFORE THE
:
: HOWARD COUNTY
:
: BOARD OF APPEALS
:
: HEARING EXAMINER
:
: BA Case No. 09-017V

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DECISION AND ORDER

On August 3, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Woelper Enterprises, Inc. and Friendly Inn, LLC (the "Petitioners") for a variance to reduce the 30-foot structure and use setback from a residential district to six feet for an outdoor seating area to be used by patrons of the snowball stand and to provide outdoor food or table service to Inn patrons, in a B-2 (Business: Local) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

Andrew Robinson, Esquire, represented the Petitioners. Jason Cooke, Steve Iampieri, Chris Merdon, and Jeff Marsh testified in support of the petition. Jacqueline Vance, Sari Bennett, Evan Evans, Russ DiPane, Kathy Fisher, Susan Boyd, Charles Christian, George Golomb, Jackie Vaughn, Sidney Holmes, Alan Horowitz, Daniel Murphy, Philip Fass, and Bradley Mattee testified in opposition to the petition.

The Petitioners certified that notice of the hearing was advertised and the property posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioners introduced into evidence nine photographs of the Property and the immediate area.

A Preliminary Matter

Referral to DPZ Pursuant to Hearing Examiner Rule 10.4

With Respect to the Outdoor Seating Area Uses Proposed

In an exchange between Mr. Robinson and myself during the proceeding, I observed that the Zoning Regulations do not expressly define or regulate several of the uses proposed or discussed by the Petitioners during the proceeding, including outdoor food or table service, outdoor piped-in or live music or entertainment, and the outdoor consumption of alcoholic beverages. I also commented that the zoning regulations in several area jurisdictions do provide for these uses, and that it is the policy (statutory or by consistent interpretation) in these jurisdictions to permit only those uses expressly set forth in the Zoning Regulations are permitted. Petitioners' counsel argued that the uses proposed to be located in the use setback from a residential district are permitted as accessory uses, being normally and customarily incidental to standard restaurants and beverage establishments, which are permitted uses in the B-1 zoning district.¹

¹ Section 103.A.3 defines an accessory use as "a use or structure which is incidental to, subordinate to, and customarily found in connection with a principal use or structure and which is situated on the same lot as the principal use or structure, except that where specifically provided in the applicable section of these regulations, accessory uses need not be located on the same lot."

The Zoning Regulations define a "standard restaurant" as "[a]n establishment which primarily prepares food to be served on nondisposable tableware and consumed on the premises, but may provide incidental carry-out." Section 103.137.

Fast food restaurants are one of the few land use categories where the Zoning Regulations directly address the outdoor consumption of food. By definition, a fast food restaurant is "[a]n establishment which prepares

Because this was the first instance in my tenure as Hearing Examiner where a petitioner requested a variance to locate these uses in the use setback from a residential district, I asked the Howard County Department of Planning and Zoning to address the proposed multiple use of the outdoor seating area in an update to the Technical Staff Report, ("TSR"), pursuant to my authority under Hearing Examiner Rule 10.4. The primary purpose of this request was to formally ascertain DPZ's policy on how it regulated or interpreted outdoor food or table service, outdoor piped-in or live music or entertainment, and the outdoor consumption of alcoholic beverages.²

In an August 19, 2009 memorandum, Ms. Marsha McLaughlin, DPZ's Director, responded, stating DPZ had sufficiently addressed the use of the outdoor seating area for which the variance was sought in its initial TSR, because its evaluation of the outdoor seating area variance "assumed that this means there would be outdoor food or table service that would be similar to what is provided indoors" as part of a standard restaurant or beverage establishment. She clarified that the proposed uses "can typically be

and sells food products intended for ready consumption, which are generally packaged in paper or served in other types of disposable plates, wrappers, or containers, for consumption inside the building, *on a patio*, or off the premises . . . " (Emphasis added.) Additionally, the New Town Zoning District also appears to permit the use of patios or outdoor seating areas for food consumption or alcoholic beverage consumption because a particular use of land in the district is regulated by an approved Final Development Plan, which may permit a broader range of land uses that expressly permitted in Euclidian zoning districts.

² A further challenge to this review, and another cause for the Section 10.4 referral to DPZ, was the Petitioners' use of the term "outdoor dining area" in the variance petition. The Zoning Regulations do not expressly define or provide for an "outdoor seating area" use. Nor do the Zoning Regulations employ the term in relation to any land use category. Chapter 12 of the Howard County Code (the Health Code), defines the term "outdoor seating area" in Section 12.600, which regulates outdoor smoking in public places. "Outdoor Seating Area" means any patio, courtyard, sidewalk cafe, backyard or other outdoor area of a restaurant or bar where food and/or beverages are served and/or consumed." Section 12.600(h). While Section 12.600 may be applicable at some juncture to the proposed patio, its purpose is to establish a policy and procedure for protecting the health of Howard County citizens, not to establish a land use category.

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incidental or customarily found in connection with a standard restaurant and/or outdoor beverage establishment, and can be permitted provided that the associated outdoor use area is delineated on the Site Development Plan.” With respect to the music or entertainment use of the outdoor seating area, she stated that DPZ does not administer noise regulations, which are the provinces of the Bureau of Environmental Health and the Department of Police. Similarly, the Howard County Liquor Board is the approval authority for the outdoor consumption of alcoholic beverages.

Pursuant to Hearing Examiner Rule 10.4, I provided the parties in this case an opportunity to comment on or challenge DPZ’s response. Mr. Robinson’s response of September 3, 2009, supported DPZ’s response and reasserted the Petitioners’ position that the three uses are permitted as a matter of right in Howard County.³

Charles Christian, the Ellicott Meadows Community Residents spokesperson, submitted a three-page response that goes well beyond the scope of Rule 10.4. For this reason, I am considering only those comments relevant to DPZ’s response memorandum. In brief, the Opposition contends that DPZ and I are in opposition as to what uses the Zoning Regulations permit.

³ I disagree with Mr. Robinson’s assertion in his response that the variance petition specifically requested the outdoor uses. The petition stated only that the patio would be used as an outdoor seating area for a snowball stand. The Petitioners submitted what was apparently a variance petition plan amendment to DPZ via Mr. Robinson’s June 15, 2009 email to DPZ’s Bob Lalush. The email stated that the overall use would remain the same, and that the outdoor seating would be used eventually for food service. This e-mail was attached to the TSR.

Woelper Enterprises, Inc., & Friendly Inn, LLC**Conclusion**

An administrative agency's interpretation and application of a statute that the agency administers should ordinarily be given considerable weight by reviewing courts. *Board of Physician Quality Assur. v. Banks*, 354 Md. 59, 69 (1999). This rule applies equally to the quasi-judicial hearing process. When a use does not change the basic nature of the primary permitted use and is truly incidental and supports the primary use, it is an accessory use. *Eastern Servs. Ctrs. Inc v. Cloverland Farms Dairy, Inc.*, 130 Md. App. 1, 744 A.2d 63(200). Further, when an ordinance does not contain a definition, a word should be given its ordinary meaning. See e.g., *Carroll County v. Richardson Foundation*, 71 Md. App. 434, 526 A.2d 63 (1987).

Section 101.P of the Zoning Regulations expressly provides that “[a]ll uses are prohibited unless specifically enumerated as a use permitted as a matter of right or as an accessory use in the various districts as provided by these regulations.” DPZ interprets the Zoning Regulations as permitting outdoor food or table service as accessory uses, finding them to be uses incidental or customarily found in connection with a standard restaurant.⁴ Because the Petitioners’ apparent amendment to the variance petition plan to provide outdoor food or table service within a use setback from a residential district is permitted as an accessory use, these uses may be approved if the Petitioners demonstrate the

⁴ The Zoning Regulations define “standard restaurant” as “[a]n establishment which primarily prepares food to be served on nondisposable tableware and consumed on the premises, but may provide incidental carry-out.”

proposed structure and uses comply with the standards for granting a zoning variance request.⁵

With respect to the Petitioners' proposed amendment to provide live or piped in music or entertainment as part of the Inn or restaurant use, certainly the Bureau of Environmental Health and the Department of Police are the sole authorities for administering noise regulations. Similarly, the Howard County Liquor Board is the sole approval authority for regulating the outdoor consumption of alcoholic beverages. Even so, the Hearing Examiner and Board of Appeals (the "Hearing Authority") are not without authority to regulate or impose conditions on these uses.

The Zoning Regulations permit standard restaurants and beverage establishments, including those serving beer, wine and liquor, in the B-1 zoning district as a matter of right. Section 118.B.33. The Zoning Regulations also authorize the Hearing Authority to confirm the existence and expansion of a nonconforming beverage establishment or restaurant. The Board of Appeals did just that in 1979, when it confirmed the existence of a nonconforming restaurant and tavern on the Property, but denied the petitioner's request to enlarge the nonconforming use, except for an area under the front porch. Clearly, then, the Zoning Regulations authorize the Hearing Authority in a variance petition proceeding to impose reasonable conditions on the restaurant or beverage establishment uses

⁵ Absent DPZ's interpretation that an "outdoor seating area" or "outdoor table service" or "outdoor dining" is an accessory use to a standard restaurant, I would have declined to read the Zoning Regulations' silence as to these uses as a legislative intent to bar such uses, reasoning that the more prudent, quasi-judicial, minimalist approach would be to conclude that the Zoning Regulations simply do not distinguish between indoor or outdoor dining, or any form of outdoor food service in the Zoning Regulations' definition of a standard restaurant.

proposed within the structure and use side setback from a residential district, or even to deny the petition, if the Petitioner has not demonstrated the proposed use or structure complies with the variance criteria.

FINDINGS OF FACT

Based upon the evidence presented at the proceeding, I find as follows:

1. The 1.87-acre property is located on the north site of Frederick Road (MD 144) about 240 feet west of Folly Quarter Road. It lies in the 3rd Election District and is identified on Tax Map 16, Grid 22, as Parcel 98, and is also known as 11074 Frederick Road (the "Property"). The Property is about 163 feet wide and 510 feet deep. According to the variance petition supplement, "there are no other parcels in the neighborhood similar in shape or size or condition as the Property," which is described as being "long and narrow."

2. The Property is improved by the 2,091-square foot Friendly Inn (the "Inn"), formally known as the Folly Quarter Inn, a tavern/restaurant that predates the 1948 establishment of zoning in Howard County. According to the variance plan, the Inn is located in the southwesterly portion of the Property. Its front appears to lie within the public street right-of-way and all but a small triangular section of the main building lies within the 30-foot structure and use side setback. At its closest, the rear and side portion of the Inn is located about six feet from the western side lot line. To the rear and side of

the Inn is a seasonal, snowball stand accessory use approved by permit since 2007. Several picnic benches dot the parking area.

To the Inn's north and northeast is an open, unmarked, 250± foot deep, partly gravel, packed earth parking area and lawn. A small, unused building sits about 130 feet from the front property line and about 20 feet from the east side lot line. Two unenclosed dumpsters are located behind the unused building.

3. Zoning History. The Technical Staff Report (the "TSR") states that the Friendly Inn, formerly known as the Folly Quarter Inn, is a tavern/restaurant that predates the 1948 establishment of zoning in Howard County. In 1979, the Board of Appeals in BA Case No. 928-C confirmed the existence of a nonconforming restaurant and tavern on the Property, but denied the petitioner's request to enlarge the nonconforming use, except for an area under the front porch. In 2004, the Property was rezoned from RC-DEO to B-1 as Amendment No. 16.5 of the 2004 Comprehensive Zoning Plan, which made the Inn a fully permitted use.

4. The Property was rezoned from RC-DEO (Rural Conservation: Density Exchange Option) to B-1 (Business: Local) as Amendment No. 16.25 in the 2004 Comprehensive Zoning Plan. With the rezoning, the nonconforming uses became a fully permitted use.

5. Vicinal Properties. All surrounding properties are zoned RC-DEO. The Board of Appeals in BA Case No. 98-15E approved a special exception for elderly housing for former Parcel 99, now part of Parcel 446, which was finally and recently developed as

single family attached age-restricted adult housing. The dwellings (some with rear decks) in this development back directly onto the rear, lawn portion of the Property (Petitioners' Exhibit 5).

The Board in BA Case No. 00-52E similarly approved the western adjoining portion of Parcel 440 (originally Parcel 204) for a much larger elderly housing project and the property was developed as an age-restricted housing project. Many of the closest dwellings in the western elderly housing development have decks overlooking the Property and are separated physically from the Inn by a storm water management facility (Petitioners' Exhibit 2, 3, and 9).

Across MD 144 to the Property's south is Lot B of Parcel 214, a large open field subject to a preservation easement.

6. Roads. MD 144 in this area has two travel lanes and about 28 feet of paving within a proposed 80-foot right-of-way ("ROW"). The posted speed limit is 40 MPH. The estimated sight distance from the existing entrance is more than 1,000 feet to the east, but very limited to the west due to the building and vegetation. State Highway Administration data show 8,771 average daily trips as of May 2006 and on MD 144 west of Marriottsville Road, 7,633 ADT as of April 2007.

7. Water and Sewer. The Property is located in the Metropolitan District, specifically the Marriottsville Service Area for sewer, and within the existing/under construction service area for water. The site is currently served by water and sewer facilities. The Health Department ordered public sewer access to the Property to address

prior septic deficiencies arising from the tavern and restaurant uses. According to the Technical Staff Report, the order may not cover the proposed expansion of these uses.

8. General Plan. The Property is designated Rural Conservation in the 2000 General Plan's Policies Map 2000-2020. MD 144 in this location is depicted as a Minor Arterial on the General Plan's Transportation Map. It is also a scenic road.

9. The Variance Petition. As originally submitted, the Petitioners sought a variance to reduce the 30-foot side structure and use setback from a residential district to six feet to construct an outdoor seating area for the snowball stand. By letter dated June 15, 2009 from Petitioners' counsel Andrew Robinson to Bob Lalush, DPZ, the Petitioners amended the petition to accommodate development plans for the eventual expansion of the outdoor dining area for food consumption, including the consumption of carryout food.

10. At the outset of the proceeding, the Petitioners' counsel proposed to amend the petition further to include a roof over the outdoor seating area. When queried as to the type of roof, Mr. Cooke stated that he did not want to commit to any roof type. In response to questioning about the proposed roof, Mr. Cooke stated that he had not priced out any specific roof types, and that he couldn't tell me what he was proposing to do.

11. According to Mr. Cooke, the Petitioners also desire to provide live or piped-in music or entertainment on the outdoor dining area.

12. Mr. Cooke testified that the Petitioners wanted to provide a more sheltered area for the snowball stand, which is "out in the open." He was also concerned about the proximity of the picnic tables to parking. He further testified that he wanted to light the outdoor seating area for atmosphere and safety. There is currently music five nights a week and bands on Saturday. The Inn has a seven-day liquor license and is open until 2:00 a.m. daily.

13. Several Opponents to the variance testified at the proceeding that they were opposed to any type of outdoor music on the outdoor seating area. They also testified to witnessing public urination.

CONCLUSIONS OF LAW

I. The Requested Variance for an Outdoor Seating Area for Snowball Stand Patrons

The petition as submitted sought a variance for an outdoor seating area for the existing snowball stand. Howard County regulates snowball stands as an accessory use where enumerated in a zoning district. Snowball stands are a permitted accessory use in the B-1 Zoning District. Section 128.D of the Zoning Regulations regulates temporary and seasonal uses, including snowball stands. The standards for snowball stand accessory uses are set forth in Section 128.D.5, which are as follows.

- a. The use shall be limited solely to the sale of snowballs;**
- b. The floor area of the structure shall be no greater than 200 square feet in a nonresidential zoning district, 100 in the RC and RR districts and 50 square feet in all other residential zoning districts;**
- c. The use shall operate only between May 1 and October 1;**

- d. In addition to the parking required for the dwelling, at least one off-street parking space shall be provided for each 25 square feet of the snowball stand;**
- e. Notwithstanding the minimum front setback requirement of the district, the minimum front setback requirement for snowball stands shall be 25 feet;**
- f. There shall be no outside storage of materials or equipment related to the operation; and,**
- g. An annual permit for the use is obtained and approved each year by the Department of Planning and Zoning prior to the beginning of operation and sales, based upon compliance with the requirements listed above. The permit application shall include a plot plan showing the location and dimensions of structures, parking areas and points of access.**
- h. All snowball stands established prior to April 13, 2004, shall not be deemed a lawful, nonconforming use.**

In my view, the requirements pertaining to a temporary and seasonal snowball stand accessory use cannot be read so broadly as to encompass a permanent outdoor seating area, an accessory use to an accessory use, as it were. A permanent outdoor seating area is inconsistent with a seasonal snowball stand land use. As I discussed during the proceeding, my informal survey of three area snowball stands supports this reasoning. The snowball stand on Route 99 in Woodstock provides shaded picnic benches. The snowball stand next to the Kendall hardware store on Clarksville Pike provides one picnic table and patio umbrella on the sidewalk. Similarly, Pete's snowball stand on Old Montgomery Road in Columbia provides a couple of picnic tables on a nearby grassy area under a tall tree. Like the Friendly Inn, this seating is "out in the open," to use Mr. Cooke description. It is also informal, nonpermanent.

II. Petitioners' Proposal to Amend the Petition During the Proceeding to Include A

Roof

At the outset of the proceeding, the Petitioners, through counsel, proposed to amend the petition further to include a roof over the outdoor seating area. When queried as to the type of roof, Mr. Cooke stated that he did not want to commit to any roof type. Given the manner in which the amendment was proposed, it does not comply with Hearing Examiner Rule 9.4, which requires petitioners who propose an amendment during the course of the proceedings to submit the amendment as an exhibit. Since the Petitioners did not present the amendment as an exhibit, the proposed roof amendment is denied.

III. Petitioner's Proposal to Amend the Petition During the Proceeding to Include

Piped-In Music or Live Entertainment

During the proceeding, Mr. Cooke testified that the Petitioners wanted to pipe-in music or provide live entertainment to diners on the outdoor seating area. Although Mr. Cooke did not expressly note this use as an amendment to the petition, it is such.

I am denying this amendment for two reasons. First, the Petitioners did not introduce this amendment as an exhibit, as is required by Hearing Examiner Rule 9.4. Second, when a Petitioner proposes to amend a petition, Hearing Examiner Rule 9.5 requires me to make a determination as to whether "the amendment proposes a use that is likely to adversely impact vicinal properties." Upon making such determination, I am

required in part to suspend the hearing for at least three (3) weeks to permit adjoining property owners to review the amendment.

In this case, the Petitioners amended the petition in the midst of the proceeding, not at the outset, as the Petitioners' did with their request to amend the petition to include a roof over the outdoor seating area. Because the Petitioners did not present the amendment until well into the hearing, neither the Opponents nor I had an opportunity to weigh in on it. In my view, a proposal to pipe in music or provide live entertainment on the outdoor seating area is a substantive amendment because it has the potential to adversely affect vicinal properties.

Assuming arguendo the Petitioners' had complied with these rules, and that the proposed uses within the variance area are accessory, music and entertainment being incidental to, subordinate to, and customarily found in connection with a beverage establishment or restaurant, I would still been compelled to deny theses uses within the use setback. Based on Mr. Cook's oral testimony, the Petitioners simply did not meet their burden of demonstrating these comported with the variance criteria. We know only that the Petitioners have a vague desire to provide live or piped-in music or entertainment on the outdoor dining area.

IV. The Requested Variance for an Outdoor Seating Area for Restaurant/Inn

Patrons

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if a Petitioner demonstrates that it meets all four variance criteria.

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

This is a two-prong test. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the petition supplement states “there are no other parcels in the neighborhood similar in shape or size or condition as the Property,” which is described as being “long and narrow.” Additionally, the existing structure sited within the ROW is noncomplying, having been built prior to the 1948 enactment of zoning regulations, and

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Section 128.B.2 of the Zoning Regulations permits additions to noncomplying structures through the variance process. Given the location of the noncomplying structure within the side setback, practical difficulties arise in complying strictly with the setback regulation. Consequently, I conclude the location of the noncomplying structure is a unique condition causing the Petitioners practical difficulty in complying with the side setback requirement, in accordance with Section 130.B.2.a(1).

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

The variance is being sought for an outdoor dining area serving a long-established use. Nonetheless, outdoor uses (i.e., those which are within my authority to review) have a unique potential to impair the use or development of adjacent property because they frequently expand beyond their permitted area. My survey of outdoor dining areas in Howard County indicates that most restaurants physically delineate the perimeter of the outdoor area. I am also concerned about the Opposition's testimony about witnessing public urination, a circumstance which, in my view, has the very real potential of intensifying with an actual outdoor use, to the detriment of the public welfare.

Although the Zoning Regulations do not impose any standards on outdoor dining area accessory uses, as they do with snowball stand accessory uses, I am permitted to approve a variance petition subject to certain conditions to ensure the proposed variance complies with Section 130.B.2. Consequently, to ensure compliance with Section 130.B.2.a(2), I am requiring the Petitioners to install a three-foot high permanent fence or

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three-foot high permanent, spaced planters along the dining area perimeter, except where the outdoor dining area's perimeter adjoins a structural wall. The fence or planter variance area demarcation shall have one means of ingress/egress for ADA access only, as required by the Department of Licenses and Permits, and the Petitioners shall install a sign at this access informing all other patrons to enter and leave the outdoor dining area through the restaurant. Subject to these conditions, I conclude the variance, if granted, will not alter the essential character of the neighborhood in which the lot is located nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The Petitioners did not create the practical difficulties or hardships, in accordance with Section 130.B.2.a(2).

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

The proposed outdoor dining area is a reasonable size. Within the intent and purpose of the regulations, then, the variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

IV. Opposition Testimony

Much of the Opposition's testimony concerned what they characterized as a change in land use, by which they meant any change to the existing use. Some opponents

lamented the loss of what they perceived as a bucolic rural area, and the effect of the outdoor dining area on the adjoining open space and pond, which is in fact a suburban artifact, the stormwater management system for the age-restricted housing. Several neighbors expressed dislike of the Inn's exterior and roof, which are painted in neon colors. Others testified that the proposed structure and uses would lead to a loss of property value. The Opposition presented no testimony contravening the petition's statement that the Property is unique.

Maryland courts instruct that the unsupported conclusions or fears of witnesses to the effect that the proposed use of the property will or will not result in harm amount to nothing more than vague and general expressions of opinion, which are lacking in probative value. *Anderson v. Sawyer*, 23 Md. App. 612, 329 A.2d 716 (1974). Because the Opposition's testimony in this case was unsupported by any evidence that the anticipated harmful effects are likely to occur, I must afford it no weight.

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ORDER

Based upon the foregoing, it is this 10th Day of September 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Woelper Enterprises, Inc., & Friendly Inn, LLC, for a variance to reduce the 30-foot structure and use setback from a residential district to six feet for an outdoor seating area to be used by patrons of the **Snowball Stand** is **DENIED**;

That the request of Woelper Enterprises, Inc., & Friendly Inn, LLC, to amend the variance petition to include a roof over the outdoor dining area is **DENIED**;

That the request of Woelper Enterprises, Inc., & Friendly Inn, LLC, to amend the variance petition to include live or piped-in music or entertainment is **DENIED**;

That the Petition of Woelper Enterprises, Inc., & Friendly Inn, LLC, for a variance to reduce the 30-foot structure and use setback from a residential district to six feet for an outdoor seating area to be used by patrons of the **Restaurant/Beverage Establishment** in a B-2 (Business: Local) Zoning District is **GRANTED**;

Provided, however;


1. The Petitioners shall install a three-foot high permanent fence or three-foot high permanent, spaced planters along the outdoor dining area perimeter, except where the outdoor dining area's perimeter adjoins a structural wall. This perimeter shall provide for one means of ingress/egress for ADA access only, as required by the Department of Licenses and Permits, and the Petitioners shall install a sign at this access

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point informing all other patrons to enter and leave the outdoor dining area through the restaurant.

2. All outdoor lighting shall comply with the Zoning Regulations.
3. The Petitioners shall obtain all necessary permits.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER


Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.